In the Supreme Court of the United States

OCTOBER TERM, 1958

No. 105

BERT RUUD AND EMMA RUUD, PETITIONERS,

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The majority and dissenting opinions of the Court of Appeals (R. 426-432) are not yet reported.

JURISDICTION

The judgment of the Court of Appeals was entered on March 18, 1958 (R. 433). The petition for a writ of certiorari was filed June 12, 1958. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether, in a condemnation proceeding instituted by the United States, a landowner is prejudiced because of the trial court's refusal to allow farmers living in the vicinity to testify as to the highest and best use for the land condemned and the fair market value thereof, where three expert witnesses presented by the landowner, and the landowner himself, had already testified fully on those subjects.

STATEMENT

This is an action brought by the United States to condemn the fee simple title to certain lands owned by the petitioners in Bonneville County, Idaho, for a federal reclamation project known as the Palisades Dam and Reservoir. The property consisted of approximately 1,000 acres of land. It was improved by a residence and a number of buildings, some of which were used in the operation of the property as a farm. Portions of the land were irrigated. (R. 6-9, 131, 230, 234-236, 324-325, 331, 342-351, 364, 375-376.)

At a trial before a jury for the determination of just compensation, the Government introduced four expert appraisers who expressed the opinion that the highest and best use of the land was for dry farming, raising such crops as alfalfa hay, barley and grass for feeding cattle. Their valuations ranged from $165,769.90 to $171,400.00. (R. 39, 45, 128-135, 158-159, 162-166, 169-181, 207-209.)

The petitioners introduced three real estate appraisers who expressed the opinions that the highest and best use of the property was for diversified farming and for growing small grain, alfalfa hay and pasture.

Some portions would be adapta e for raising seed potatoes. They valued the property at $249,350.00, $252,503.00 and $255,460.25. (R. 225-229, 284-289, 315-317, 322.) Mr. Ruud testified as to the improvements to and the natural attributes of the property, the use he formerly had made of the land, that the highest and best use was as a diversified farm and livestock operation, and he valued the property at $299,810.00 (R. 351-377). Petitioners also introduced two witnesses who were farmers in the neighborhood of the property. They testified as to the soil classifications and its productivity. On objection of the Government because they were not experts on appraising real estate, they were not permitted to testify as to the market value of the property, or to give their opinions as to its highest and best use. (R. 379-380, 385-388, 391-398, 402-408.)

The jury returned a verdict for $171,400.00 and a judgment confirming the award was entered (R. 14-20). The Court of Appeals affirmed the judgment, holding that, although the trial court was in error in requiring every witness to be qualified as an expert real estate appraiser before giving an opinion as to the highest and best use or the fair market value of the property, the verdict was supported by substantial evidence and, in the circumstances of this case, the exclusion of the testimony of the two farmers might have been justified upon other grounds, that their objection had been waived by petitioners, and, in any event, that the exclusion was not prejudicial (R. 426-431).

ARGUMENT

Rather than trying a case where all of the landowners' evidence was excluded, as the petition implies,

the trial court permitted three expert witnesses and petitioner Ruud himself to testify fully as to market value of the land. In deciding that the petitioners had not been prejudiced by the trial court's refusal to allow two farmers to testify as to these matters, the Court of Appeals considered the qualifications of these expert witnesses, stating that two of them were owners and operators of farms as well as experienced appraisers, and that "In addition to these, Ruud himself, as owner, was permitted to give an opinion of fair market value based upon the highest and best use" (R. 430).

Obviously, the views of these two witnesses on highest and best use and value could have been merely cumulative. No offer of proof was made. There was no real issue as to highest and best use since both sides regarded it as agricultural land. Moreover, there is no reason to believe that the views of the rejected witnesses on the question of value would have made any different impression on the jury than the testimony of the four persons whom they heard.

What the majority of the court below held in this case was that, in this situation, while the trial court might properly have allowed these witnesses to testify, it likewise could have excluded their testimony as cumulative and that no prejudice resulted from the exclusion. Moreover, as pointed out by the majority opinion, the trial court's rejection of these witnesses was not final, the way being left open at petitioners' request for them to reopen the question with the trial court. Having failed to avail themselves of this opportunity, petitioners cannot well complain on appeal.

CONCLUSION

The decision below is plainly right. There is no question of importance, no conflict of decision, and the petition for a writ of certiorari should be denied.

Respectfully submitted,

J. LEE RANKIN,
Solicitor General.

PERRY W. MORTON,
Assistant Attorney General.

ROGER P. MARQUIS,
ELIZABETH DUDLEY,
Attorneys.

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